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Date: March 24, 1999

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Total Pages (including this page): 89

Reference: 13071-12

Comments: Attachment to Letter

346174



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event.

65. If the Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Performing Settling Defendants complied with the requirements of Paragraphs 62 and 63, above. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION

66. Unless otherwise expressly provided in this Consent Decree, the dispute resolution procedures of this Section shall be available and shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Settling

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Defendants that have not been disputed in accordance with this Section.

67. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

68. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, after a reasonable opportunity for review and comment by the State, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Performing Settling Defendants or Contributing Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Performing Settling Defendants or Contributing Settling Defendants. The Statement of Position shall specify the Performing Settling Defendants' or Contributing Settling Defendants' position as to whether formal

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dispute resolution should proceed under paragraph 71 or 72.

69. Within fourteen (14) days after receipt of Performing Settling Defendants' or Contributing Settling Defendants' Statement of Position, EPA, after a reasonable opportunity for review and comment by the State, will serve on Performing Settling Defendants or Contributing Settling Defendants and the State its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The State may also serve a Statement of Position within the fourteen-day time limit set forth above in this Paragraph. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 71 or 72.

70. If there is disagreement between EPA and the Performing Settling Defendants or the Contributing Settling Defendants as to whether dispute resolution should proceed under Paragraph 71 or 72, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Performing Settling Defendants or the Contributing Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 71 or 72.

71. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other

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disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Performing Settling Defendants or Contributing Settling Defendants regarding the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Performing Settling Defendants, Contributing Settling Defendants, EPA or the State.

b. The Director of the Office of Site Remediation and Restoration, EPA Region I, will issue, after a reasonable opportunity for review and comment by the State, a final administrative decision resolving the dispute based on the administrative record described in Paragraph 71.a. This decision shall be binding upon the Performing Settling Defendants or the Contributing Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 71.c and 71.d.

c. Any administrative decision made by EPA pursuant to Paragraph 71.b. shall be reviewable by this Court, provided that a notice of judicial appeal or judicial review of the decision is filed by the Performing Settling Defendants or the Contributing Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and the State may file within 30 days a response to Performing Settling Defendants' or the Contributing Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, the Performing Settling Defendants or the Contributing Settling Defendants shall have the burden of demonstrating that the decision of the Office of Site Remediation and Restoration Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 71.a.

72. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

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a. Following receipt of Performing Settling Defendants' or Contributing Settling Defendants' Statement of Position submitted pursuant to Paragraph 68, the Director of the Office of Site Remediation and Restoration, EPA Region I, after a reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The Office of Site Remediation and Restoration Director's decision shall be binding on the Performing Settling Defendants or the Contributing Settling Defendants unless, within 10 days of receipt of the decision, the Performing Settling Defendants or the Contributing Settling Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file within 30 days a response to Performing Settling Defendants' or Contributing Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph Q of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

73. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent

Decree not directly in dispute, unless EPA, after a reasonable opportunity for review and comment by the State, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 85, 108. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

74. Disputes solely between the State and Settling Defendants.

Disputes arising under the Consent Decree between the State and Settling Defendants shall relate solely to Future Response Costs owed to the State and assessment of stipulated penalties by the State, and shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 67-73, except that each reference to EPA shall read as a reference to RIDEM, each reference to the Director of the Office of Site Remediation and Restoration, EPA Region I, shall be read as a reference to the Director, RIDEM, each reference to the United States shall be read as a reference to the State, and each reference to the State's reasonable opportunity for review and comment shall be

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deleted.

XXII. STIPULATED PENALTIES

75. Performing Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 76 and 77 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). For all noncompliance except those addressed in Paragraph 84 of this Section, the United States shall receive 75 percent of stipulated penalties received, and the State shall receive 25 percent of stipulated penalties received. For all noncompliance addressed in Paragraph 84 of this Section, the State shall receive 75% of stipulated penalties received, and the United States shall receive 25% of stipulated penalties received. "Compliance" by Performing Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

76. The following stipulated penalties shall accrue per violation per day for any noncompliance with the milestones and deliverables required under the following subparts of the SOW:

V.A. 1. Surface Water and Ground Water Monitoring Plan